

## **Problems with the Foundation proposed in SB 1294**

SB 1294, as passed by the Senate on October 17, 2012, creates the Michigan Health and Wellness Foundation. This new, charitable foundation will receive annual charitable contributions from Blue Cross Blue Shield of Michigan (Blue Cross) as part of its conversion. This handout (1) gives general goals for the foundation, (2) discusses the deficiencies of the proposed foundation under SB 1294, and (3) offers an alternative corporate form—the public body corporate.

### **A. Goals for the proposed Health and Wellness Foundation**

- Promote healthcare of the people of Michigan, especially children and seniors.
- Preserve and protect the foundation's assets for this charitable purpose.
- Have an independent board that is free of conflicts with Blue Cross.
- Operate transparently with Attorney General oversight of charitable assets.
- Minimize federal taxes; maximize deductibility of contributions.
- Minimize investment risk and administrative costs.

### **B. Deficiencies in SB 1294 as passed by the Senate**

- IRS might deny 501(c)(3) status for the newly formed nonprofit corporation
- *If* the IRS granted tax-exempt status, there are still problems
  - 5% mandatory distributions—or severe excise taxes
  - 1% to 2% tax on annual investment income
- Possible control of new foundation by Blue Cross
- No Attorney General representation on the board
- No mandatory audit; no mention of FOIA
- Uncertain legal status

### **C. A better alternative —incorporation as a public body corporate**

- As a political subdivision, exempt from IRS taxes and regulation
- Tax-deductible charitable contributions
- Transparent – FOIA and Open Meetings Act
- Attorney General as legal advisor
- Independent audits from the State Auditor General
- Lower investment and administrative costs; higher potential returns
- Funds may only be used for the trust's specific purposes
- Existing models and case law
- Governmental immunity